

Message Text

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SUBJECT: STATEMENT FOR TRADE COMMITTEE WORKING PARTY
ON S&D

SUMMARY THE OECD HAS PREPARED TWO NEW PAPERS
FOR THE MARCH 10-11 MEETING OF THE TRADE COMMITTEE WORKING
PARTY ON S&D. THOSE PAPERS ADDRESS THE ECONOMIC
IMPLICATIONS OF SPECIAL AND DIFFERENTIAL TREATMENT FOR
DEVELOPING COUNTRIES IN NON-TARIFF MEASURES (TC/WP (77)7)
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AND PROBLEMS CONNECTED WITH PARTIAL ADHERENCE BY LDCE TO
INTERNATIONAL CODES ON NON-TARIFF MEASURES (TC/WP (77) 8).
THE US DELEGATION TO THE TRADE COMMITTEE IN NOVEMBER
SUGGESTED THE SECRETARIAT UNDERTAKE THE ECONOMIC
ANALYSIS. THE US REP AT THE TCWP SHOULD HAVE SOME
QUESTIONS AND COMMENTS TO MAKE AT THE UPCOMING MEETING.
THE REVISED VERSION OF THE PAPERS SURVEYING POSSIBLE
S&D MEASURES (TC/WD(76)24 (1ST REV) AND ON GRADUATION
(TC/WP (76) (1ST REV) MAY ALSO BE REVIEWED.
END SUMMARY

1. THE OECD TRADE COMMITTEE WORKING PARTY ON SPECIAL AND DIFFERENTIAL TREATMENT FOR LDCS IN THE TRADE AREA MEETS ON MARCH 10-11 TO DISCUSS THE PAPERS SUMMARIZED BELOW. IT WILL BE ATTENDED BY, AMONG OTHERS, MEMBERS

OF THE MTN DELEGATIONS OF MANY OF THE OECD COUNTRIES. THE PAPERS WILL THUS BE DISCUSSED WITH AN EYE TOWARD THE APPLICATION OF THEIR FINDINGS TOWARD CURRENT MTN NEGOTIATIONS.

2. TC/WP(77) 7 EXAMINES POSSIBLE ECONOMIC IMPLICATIONS OF S&D FOR LDCS IN VARIOUS NON-TARIFF AREAS FROM THE STANDPOINT OF THE EFFECTS ON RECIPIENT COUNTRIES (LDCS), ON DONORS (DCS), ON THIRD COUNTRIES (DCS AND LDCS), AND ON WORLD TRADE IN GENERAL. THE PAPERS GENERAL CONCLUSION IS THAT WHILE S&D HAS SOME POSSIBLE ADVANTAGES TO LDCS THERE ARE ALSO POSSIBLY DISADVANTAGES FOR LDCS AND ARE ALSO SOME PROBABLE DISADVANTAGES TO DONORS AND THIRD COUNTRIES. THEREFORE (A) THE OVERALL EFFECT ON WORLD TRADE IS AMBIGUOUS (B) DECISIONS ON THE GRANTING OF SUCH MEASURES MUST ULTIMATELY BE POLITICAL AND (C) THERE IS MORE TO BE GAINED - BY LDCS AND THE WORLD IN GENERAL - BY FOLLOWING THE GENERAL LIBERALIZING, MFN PATH. SPECIFICALLY, THE PAPER SUGGESTS THE FOLLOWING: (A) QRS: PRIORITY CONSIDERATION LIMITED OFFICIAL USE
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TION MIGHT BEST BE GIVEN TO MFN REDUCTIONS ON ITEMS OF INTEREST TO LDCS, WITH LESS THAN FULL RECIPROCITY, RATHER THAN PREFERENTIAL TREATMENT OF LDCS, (B) SAFEGUARDS: "RECOGNITION OF THE PRINCIPLE THAT THE SPECIAL INTERESTS OF THE DEVELOPING COUNTRIES SHOULD BE TAKEN INTO ACCOUNT AS FAR AS POSSIBLE"; (C) SUBSIDIES/ CVD AND ANTI-DUMPING; THE PAPER SUGGESTS THAT RATHER THAN HAVE DIFFERENT RULES FOR DCS AND LDCS, THERE COULD BE CODES ALLOWING CERTAIN KINDS OF PRACTICES FOR INDUSTRIES IN ALL COUNTRIES, WHICH WOULD BY THEIR NATURE BE MORE FREQUENTLY APPLICABLE TO LDCS. (D) ADMINISTRATIVE MEASURES AND GOVERNMENT PROCUREMENT: TECHNICAL ASSISTANCE TO HELP LDCS IMPLEMENT CODES, A LONGER TIME PERIOD TO COME INTO FULL COMPLIANCE AND (FOR GOVERNMENT PROCUREMENT) VERY SPECIFIC AND LIMITED DEROGATIONS TO ALLOW THE DEVELOPMENT OF CERTAIN LOCAL INDUSTRIES.

3. TC/WP/ (77)8 ASSUMES THE DESIRABILITY OF WIDEST AND MOST COMPREHENSIVE APPLICATION OF SUCH CODES. ON THIS BASIS, IT EXAMINES THE PROBLEMS OF PARTIAL ADHERENCE BY LDCS TO CODES ON NON-TARIFF MEASURES AND OUTLINES ALTERNATIVES, BUT COMES TO NO CONCLUSIONS

OF THE KIND REACHED IN THE PREVIOUS PAPER.

4. IT FIRST OUTLINES THE POSSIBLE RELATIONSHIPS OF LDCS TO CODES IN TERMS OF ADHERENCE TO THE CODES, ELIGIBILITY FOR BENEFITS, THE INCLUSION OF SPECIAL

PROVISIONS FOR LDCS, AND POSSIBLE ASSISTANCE IN THE IMPLEMENTATION OF OBLIGATIONS. IN SO DOING, IT POINTS OUT THAT IF BENEFITS WERE TIED TO ACCEPTANCE OF OBLIGATIONS - NORMALLY A WORTHY PRINCIPLE-THE POOREST COUNTRIES WOULD BE VICTIMIZED BY THEIR RELATIVE INABILITY TO ADHERE TO SUCH CODES.

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5. THE PAPER THEN ADDRESSES THE IMPORTANT ISSUE OF HOW TO ENCOURAGE LDC PARTICIPATION IN THE CODES. IN THIS RESPECT IT SUGGESTS TECHNICAL ASSISTANCE AND PHASED-IN COMPLIANCE AS POSITIVE INCENTIVES, AND THE DENIAL OF PROCEDURAL PROVISIONS SUCH AS DISPUTE SETTLEMENT TO NON-ADHERENTS AS A NEGATIVE INCENTIVE. IT CONCLUDES THAT LDCS MAY NOT FIND THE CODES SUFFICIENTLY BENEFICIAL IN AND OF THEMSELVES, AND THAT THEIR ADHERENCE MAY BE ONE ASPECT OF AN OVERALL NEGOTIATING PACKAGE.

6. THE FINAL MAJOR QUESTION ADDRESSED IS THE LEGAL NATURE OF DIFFERENTIAL TREATMENT IN THE CODES; I.E. WHETHER SUCH TREATMENT SHOULD BE CONTRACTUAL OR FOLLOW SOME LESS FORMAL APPROACH SUCH AS (A) AUTONOMOUS TREATMENT WITHIN THE CODE (B) INCORPORATION INTO A RESERVATION OR INTERPRETATION, OR (C) DISCRETIONARY TREATMENT OUTSIDE THE CODE. THE PAPER SUGGESTS THAT THE CONTRACTUAL APPROACH MAY OFFER MORE OF AN INDUCEMENT TO THE LDCS TO ADHERE TO THE CODE BUT A LESS FORMAL APPROACH WOULD ALLOW (A) GREATER SCOPE FOR DIFFERENTIAL TREATMENT AMONG LDCS, (B) MORE LDC FLEXIBILITY IN THE OPERATION OF NATIONAL TRADE POLICIES AND (C) AVOIDANCE OF COMPLEX MULTILATERAL NEGOTIATIONS.

7. TOGETHER, THESE PAPERS PROVIDE AN OVERVIEW AND STARTING POINT FOR DETAILED DISCUSSION OF THE PROBLEMS INVOLVED IN S&D. IN GENERAL, THE USG CONSIDERS THE WORK TO BE OF EXCELLENT QUALITY AND PARTICULARLY VALUABLE FOR THE EMPHASIS ON THE BENEFITS WHICH WOULD ACCRUE TO LDCS FROM TRADE LIBERALIZATION WITHOUT THE NEED FOR POTENTIALLY COUNTERPRODUCTIVE S&D MEASURES. NEVERTHELESS, IN THE REAL WORLD WHERE GENERAL, MFN LIBERALIZATION MAY BE LIMITED, SOME DIFFERENTIAL TREATMENT SHOULD BE SERIOUSLY CONSIDERED.

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8. THERE ARE AREAS IN WHICH WORK COULD PROCEED FURTHER. THESE INCLUDE (A) ELIGIBILITY (INCLUDING DURATION) FOR S&D, (B) THE PROBLEM OF BURDEN SHARING (C) DETAILS ON THE KINDS OF MFN RULES WHICH WOULD BE

OF SPECIAL BENEFIT TO LDCS, (D) WHAT SPECIAL OR DIFFERENTIAL TREATMENT COULD BE ACCEPTED IF TOTAL LIBERALIZATION IS NOT FEASIBLE, (E) THE LINE BETWEEN DIFFERENTIAL TREATMENT WHICH WOULD RESULT IN "COMPETITIVE" VS "PREFERENTIAL" STATUS FOR LDC EXPORTS AND (F) APPROPRIATE LDC COMMITMENTS WITH AN EMPHASIS PERHAPS ON CORRECTING LDC PRACTICES WHICH MAY BE DETRIMENTAL TO THE LDCS AS WELL AS TO WORLD TRADE IN GENERAL.

9. CONSIDERATION SHOULD ALSO BE GIVEN TO THE DISTINCTION BETWEEN DIFFERENTIAL TREATMENT WHICH MAY BE ECONOMICALLY JUSTIFIABLE ON EFFICIENCY GROUNDS,

AND SUCH TREATMENT WHICH WOULD BE NEEDED TO OFFSET THE EFFECTS OF LDC GOVERNMENT POLICIES.

10. (TC/WP (77)8) RAISES THE PROBLEM OF "CONDITIONAL MFN." THE US HAS NOT YET TAKEN A FIRM POSITION IN THE MTN ON THE DESIRABILITY OF CONDITIONAL MFN FOR SOME CODES. THE US REP TO THE TCWP SHOULD NOT DISCOURAGE ANY DISCUSSION OF THE PROS AND CONS AND SHOULD REPORT OTHER REPS THINKING.

11. FINALLY, THESE PAPERS MUST DO MORE THAN FILL UP FILES, BUT THE QUESTION OF HOW TO INCORPORATE THESE IDEAS INTO THE MTN NEGOTIATIONS IS A COMPLEX ONE. ALTHOUGH THEY REPRESENT A RELATIVELY GENERAL APPROACH, THEY ARE AHEAD OF RELEVANT DISCUSSIONS IN THE MTN. THE PAPERS SHOULD BE USEFUL TO THE OECD MEMBER PARTICIPANTS IN THE FRAMEWORK AND INDIVIDUAL MTN GROUPS.

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WE ARE NOT PREPARED TO SAY HOW THESE PAPERS SHOULD BE HANDLED WITH RESPECT TO THE MTN, BUT DC DELS SHOULD HAVE THE FLEXIBILITY TO MAKE APPROPRIATE USE OF THESE IDEAS.

12. TALKING POINTS

A. WE CONSIDER THE NEW AND REVISED EARLIER PAPER TO BE VERY WELL DONE AND ARE APPRECIATIVE THAT THE

SECRETARIAT WAS ABLE TO DO THIS ANALYSIS.

B. WE ARE PARTICULARLY INTERESTED IN THE CONCLUSIONS WHICH SUGGEST THAT LDCS CAN BENEFIT MORE FROM MANY TYPES OF LIBERALIZING OUTCOMES OF THE MTN THAN FROM DIFFERENTIAL TREATMENT IN NON-LIBERALIZING SITUATIONS.

C. WE WOULD APPRECIATE CLARIFICATION AND FURTHER ELABORATION OF THOSE POINTS IN THE PAPER SUGGESTING POSSIBLE BENEFICIAL FORMS OF SPECIAL OR DIFFERENTIAL TREATMENT. FOR EXAMPLE IN SUBSIDIES/CVD AND ANTI-DUMPING AREAS THE PAPER SUGGESTS THAT CRITERIA COULD BE DEVELOPED ALLOWING CERTAIN KINDS OF PRACTICES APPLICABLE ON AN MFN BASIS BUT BENEFITTING MOSTLY LDCS. WHAT KINDS OF CRITERIA DID THE AUTHORS HAVE IN MIND?

D. THERE ARE CERTAIN DETAILED ASPECTS OF S&D WHICH MAY NEED ADDITIONAL ATTENTION; I.E. ELIGIBILITY (AND GRADUATION) CRITERIA, BURDEN SHARING, RECIPROCITY.

E. CONSIDERATION SHOULD BE GIVEN TO THE DISTINCTION BETWEEN DIFFERENTIAL TREATMENT WHICH MAY BE ECONOMICALLY JUSTIFIABLE ON EFFICIENCY GROUNDS, AND SUCH TREATMENT WHICH WOULD BE NEEDED TO OFFSET THE EFFECTS OF LDC GOVERNMENT POLICIES. WE DO NOT THINK DIFFERENTIAL TREATMENT SHOULD BE GIVEN AS AN ALTERNATIVE TO LIMITED OFFICIAL USE
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IMPROVING LDC POLICIES.

F. ADDITIONAL ATTENTION SHOULD BE PAID TO THE ASPECT OF WHETHER DIFFERENTIAL TREATMENT SHOULD BE DIRECTED AT ENABLING LDCS TO BECOME COMPETITIVE OR ACTUALLY TO HAVE AN ADVANTAGE IN EXPORT MARKETS AS A RESULT OF CERTAIN KINDS OF S&D. THE US IS OF THE VIEW THAT S&D SHOULD BE TEMPORARY AND PHASED OUT. IT SHOULD ONLY BE USED TO OVERCOME TEMPORARY DISADVANTAGES AND NOT GRANT ADVANTAGES ON A PERMANENT BASIS.

G. WE WOULD APPRECIATE SOME DISCUSSION OF HOW THE IDEAS IN THESE PAPERS COULD IMPACT ON THE NEGOTIATIONS. WE BELIEVE THE TCWP SHOULD RAISE THE QUESTION FOR THE TRADE COMMITTEE'S CONSIDERATION, GIVING A RANGE OF OPTIONS BUT WITHOUT ANY RECOMMENDATION. SUCH OPTIONS MIGHT INCLUDE 1) CONFINE THE PAPERS TO USE BY INDIVIDUAL OECD COUNTRY DELS TO THE MTN AS THEY WISH. 2) MAKE SOME ATTEMPT TO REACH A CONSENSUS IN OECD ON THE DESIRABILITY OR UNDERSIRABILITY OF INDIVIDUAL MEASURES RAISED IN THE PAPERS. 3) ASK THE OECD FOR FURTHER WORK ON SPECIFIC POINTS.

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